

IC 12-17.2-5

Chapter 5. Regulation of Child Care Homes

IC 12-17.2-5-1

Operation of home without proper licensure; prohibition

Sec. 1. (a) A person may not operate a child care home without a license issued under this article.

(b) The state or a political subdivision of the state may not operate a child care home without a license issued under this article.

(c) A person may not operate a child care home if:

- (1) the number of children maintained on the premises at any one time is greater than the number authorized by the license; and
- (2) the children are maintained in a building or place not designated by the license.

As added by P.L.1-1993, SEC.141. Amended by P.L.136-1993, SEC.16.

IC 12-17.2-5-2

Consultation with fire prevention and building safety commission

Sec. 2. The fire prevention and building safety commission must provide consultation regarding the licensure of child care homes to the division upon request.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-5-3

Applying for licenses

Sec. 3. (a) An applicant must apply for a child care home license on forms provided by the division.

(b) An applicant must submit the required information as part of the application.

(c) An applicant must submit with the application a statement attesting that the applicant has not been:

- (1) convicted of:
 - (A) a felony;
 - (B) a misdemeanor relating to the health or safety of children;
 - (C) a misdemeanor for operating a child care center without a license under IC 12-17.2-4-35; or
 - (D) a misdemeanor for operating a child care home without a license under section 35 of this chapter; and
- (2) charged with:
 - (A) a felony;
 - (B) a misdemeanor relating to the health or safety of children;
 - (C) a misdemeanor for operating a child care center without a license under IC 12-17.2-4-35; or
 - (D) a misdemeanor for operating a child care home without a license under section 35 of this chapter;

during the pendency of the application.

(d) An applicant must submit the necessary information, forms, or consents for the division to conduct a criminal history check on the applicant and the applicant's spouse.

(e) An applicant must do the following:

(1) Conduct a criminal history check of the applicant's:

(A) employees;

(B) volunteers; and

(C) household members who are:

(i) at least eighteen (18) years of age; or

(ii) less than eighteen (18) years of age but have previously been waived from juvenile court to adult court.

(2) Maintain records of each criminal history check.

As added by P.L.1-1993, SEC.141. Amended by P.L.61-1993, SEC.11; P.L.136-1993, SEC.15; P.L.109-2002, SEC.10.

IC 12-17.2-5-4

Grounds for denial of license applications

Sec. 4. (a) The following constitute sufficient grounds for a denial of a license application:

(1) A determination by the division of child abuse or neglect (as defined in IC 31-9-2-14) by the applicant.

(2) A criminal conviction of the applicant, of an employee or a volunteer of the applicant, or of a member of the applicant's household, of any of the following:

(A) A felony.

(B) A misdemeanor related to the health or safety of a child.

(C) A misdemeanor for operating a child care center without a license under IC 12-17.2-4-35.

(D) A misdemeanor for operating a child care home without a license under section 35 of this chapter.

(3) A determination by the division that the applicant made false statements in the applicant's application for licensure.

(4) A determination by the division that the applicant made false statements in the records required by the division.

(5) A determination by the division that the applicant previously operated a:

(A) child care center without a license under IC 12-17.2-4; or

(B) child care home without a license under this chapter.

(b) Notwithstanding subsection (a)(2), if:

(1) a license application is denied due to a criminal conviction of:

(A) an employee or a volunteer of the applicant; or

(B) a member of the applicant's household; and

(2) the division determines that the:

(A) employee or volunteer has been dismissed by the applicant; or

(B) member of the applicant's household is no longer a member of the applicant's household;

the criminal conviction of the former employee, former volunteer, or former member does not require denial of a license application.

As added by P.L.1-1993, SEC.141. Amended by P.L.136-1993, SEC.17; P.L.1-1997, SEC.69; P.L.109-2002, SEC.11.

IC 12-17.2-5-5

Incomplete applications

Sec. 5. The division may not act on an incomplete application. The division shall return an incomplete application with a notation as to omissions. The return of an incomplete application shall be without prejudice.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-5-6

Investigation of applicants

Sec. 6. The division shall investigate a person seeking licensure to determine whether the person is in compliance with this article. The investigation shall be conducted any time the home is in operation in announced or unannounced visits. Activities may include onsite inspections, record reading, observation, and interviewing. The division may require that evidence of compliance with the rules be presented in a form and manner specified in the rules.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-5-6.3

Class I child care home

Sec. 6.3. (a) To qualify for a license to operate a class I child care home under this chapter, a person must do the following:

- (1) Provide documentation to the division that the licensee has received a high school diploma or a high school equivalency certificate as described in IC 12-14-5-2.
- (2) Provide documentation to the division that the licensee:
 - (A) has completed;
 - (B) is enrolled in; or
 - (C) agrees to complete within the next three (3) years;a child development associate credential program or a similar program approved by the division.

The division may grant a waiver or variance of the requirement under subdivision (2).

(b) A class I child care home may serve a school age child during a break in the school year that exceeds four (4) weeks if the following conditions are met:

- (1) The school age child:
 - (A) was in the home part time during the four (4) months preceding the break; or
 - (B) has a sibling attending the child care home.
- (2) The child care home meets the following requirements:
 - (A) Provides at least thirty-five (35) square feet for each child.
 - (B) Maintains the child to staff ratio required under rules adopted by the division for each age group of children in attendance.
 - (C) Provides age appropriate toys, games, equipment, and activities for each age group of children enrolled.
 - (D) If the licensee does not reside in the child care home, the child care home has:
 - (i) at least two (2) exits that comply with the exit requirements for an E-3 building occupancy classification under the Indiana building code adopted by the fire

- prevention and building safety commission;
- (ii) an illuminated exit sign over each required exit; and
- (iii) emergency lighting for each required exit.
- (3) The licensee for the child care home has maintained a class I child care home license for at least twelve (12) children:
 - (A) for at least one (1) year; and
 - (B) without any citations for noncompliance.

As added by P.L.247-2001, SEC.8.

IC 12-17.2-5-6.5

Qualification for licensure of class II child care home

Sec. 6.5. (a) To qualify for a license to operate a class II child care home under this chapter, a person must do the following:

- (1) Provide all child care services on the first story of the child care home unless the class II child care home meets the exceptions to the first story requirements contained in the Indiana building code adopted by the fire prevention and building safety commission in effect at the time the class II child care home provider applies for licensure.
- (2) Provide a smoke detection system that is:
 - (A) hard wired to the building's electrical system; and
 - (B) wired in a manner that activates all of the detector devices in the building when one (1) detector device is activated.
- (3) Provide a fire extinguisher in each room that is used to provide child care services.
- (4) Meet the exit requirements for an E-3 building occupancy classification under the Indiana building code adopted by the fire prevention and building safety commission in effect at the time the class II child care home provider applies for licensure.
- (5) Provide a minimum of thirty-five (35) square feet for each child.
- (6) Conduct fire drills required under article 37 of the Indiana fire prevention code adopted by the fire prevention and building safety commission in effect at the time the class II child care home provider applies for licensure.
- (7) Apply for a license before July 1, 1996, or after June 30, 2001.
- (8) Comply with rules adopted by the division of family and children for class II child care homes.

(b) To qualify for a license to operate a class II child care home under this chapter, a person, before applying for the license, must have:

- (1) a class I child care home license; or
- (2) at least one (1) year of experience as a caregiver in a child care home or child care center.

As added by P.L.136-1993, SEC.18. Amended by P.L.106-1996, SEC.2; P.L.247-2001, SEC.9.

IC 12-17.2-5-7

Issuance of licenses

Sec. 7. The division shall issue a license to a person who meets all of the license requirements when an investigation shows the applicant to be in compliance under this article.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-5-7.5

License indication of class I or II child care home; sanctions for noncompliance with number of children or requirements of home within class

Sec. 7.5. (a) The license issued to a person for the operation of a child care home under section 7 of this chapter shall indicate whether the child care home is licensed as a class I child care home or a class II child care home.

(b) A person who:

- (1) holds a license to operate a class I child care home; and
- (2) at any time serves a number of children greater than the number allowed under IC 12-7-2-33.7;

is subject to sanctions under section 33 of this chapter, a civil penalty under section 34 of this chapter, and the criminal penalty set forth in section 35 of this chapter.

(c) A person who:

- (1) holds a license to operate a class II child care home; and
- (2) at any time:
 - (A) serves a number of children greater than the number allowed under IC 12-7-2-33.8; or
 - (B) fails to comply with the requirements for class II child care homes set forth in section 6.5 of this chapter;

is subject to sanctions under section 33 of this chapter, a civil penalty under section 34 of this chapter, and the criminal penalty set forth in section 35 of this chapter.

As added by P.L.136-1993, SEC.19.

IC 12-17.2-5-8

Eligibility for waivers and variances

Sec. 8. A child care home may be eligible to receive a waiver or variance from the requirements of this chapter by complying with IC 12-17.2-2-10.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-5-9

Denial of licenses

Sec. 9. (a) The division shall deny a license when an applicant fails to meet the requirements for a license.

(b) The division shall send written notice by certified mail that the application has been denied and give the reasons for the denial.

(c) An administrative hearing concerning the denial of a license shall be provided upon written request by the applicant. The request must be made within thirty (30) calendar days after receiving the written notice under subsection (b).

(d) The administrative hearing shall be held within sixty (60) calendar days after receiving the written request.

(e) The administrative hearing shall be held in accordance with IC 4-21.5-3.

(f) The division shall issue a decision within sixty (60) calendar

days after the conclusion of the hearing.
As added by P.L.1-1993, SEC.141.

IC 12-17.2-5-10

Delegation of investigations; issuance or notification of denial of licenses; supervision and monitoring

Sec. 10. (a) The division may delegate the investigation of child care homes to a person. The person is responsible for completing a child care home licensing study that shows substantial compliance with child care rules and is the basis of a recommendation for licensure to the division.

(b) The division shall issue the license or notify the person if a license is not to be issued, giving the reasons for the denial.

(c) After licensure, the person shall supervise and monitor the child care home in relation to the rules for licensure and shall recommend subsequent licensing and enforcement actions.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-5-11

Investigation of unlicensed premises

Sec. 11. The division shall investigate any premises that the division has reason to believe are being used for child care without a license in circumstances where a license is required.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-5-12

Expiration, transferability, display, and renewal of licenses

Sec. 12. (a) A license for a child care home expires two (2) years after the date of issuance, unless revoked, modified to a probationary or suspended status, or voluntarily returned.

(b) A license issued under this chapter:

- (1) is not transferable;
- (2) applies only to the licensee and the location stated in the application; and
- (3) remains the property of the division.

(c) A current license shall be publicly displayed.

(d) When a licensee submits a timely application for renewal, the current license shall remain in effect until the division issues a license or denies the application.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-5-13

Provisional licenses

Sec. 13. (a) The division may grant a provisional license to an applicant who is not able to demonstrate compliance with a rule because the child care home is not in full operation.

(b) The provisional license shall be granted for not more than one (1) year and is subject to review every three (3) months.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-5-14

Probationary licenses

Sec. 14. (a) The division may grant a probationary license to a licensee who is temporarily unable to comply with a rule if:

- (1) the noncompliance does not present an immediate threat to the health and well-being of the children;
- (2) the licensee files a plan with the division to correct the areas of noncompliance within the probationary period; and
- (3) the division approves the plan.

(b) A probationary license is valid for not more than six (6) months. The division may extend a probationary license for one (1) additional period of six (6) months.

(c) An existing license is invalidated when a probationary license is issued.

(d) At the expiration of the probationary license, the division shall reinstate the original license to the end of the original term of the license, issue a new license, or revoke the license.

(e) Upon receipt of a probationary license, the licensee shall return to the division the previously issued license.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-5-15

Inspections

Sec. 15. The division shall do the following:

- (1) Make annual onsite inspections.
- (2) Keep written records of the division's monitoring activities and inspections.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-5-16

Cooperation by licensees

Sec. 16. The licensee shall cooperate with the division in carrying out these activities, including permitting the division to conduct announced or unannounced inspections.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-5-17

Unscheduled visits by parents and guardians

Sec. 17. Unscheduled visits by a custodial parent or guardian of a child shall be permitted at any time the child care home is in operation.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-5-18

Records

Sec. 18. (a) A licensee shall keep records regarding each child in the control and care of the licensee as the division requires and shall report to the division, upon request, the facts the division requires with reference to children.

(b) The division shall keep records regarding children and facts learned about children and their parents or relatives confidential.

(c) The following are permitted access to records regarding children and facts learned about children:

- (1) A state agency involved in the licensing of the child care home.
- (2) A legally mandated child protection agency.
- (3) A law enforcement agency.
- (4) An agency having the legal responsibility to care for a child placed at the child care home.
- (5) The parent, guardian, or custodian of the child at the child care home.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-5-18.1

Immunizations

Sec. 18.1. (a) After December 31, 2002, a licensee shall maintain and annually update documentation provided by the physician of each child who is cared for in a child care home where the licensee provides child care that the child has received complete age appropriate immunizations, including:

- (1) conjugated pneumococcal vaccine; and
- (2) varicella vaccine or a demonstrated immunity to varicella.

The state department of health shall determine for each age level the immunizations that constitute complete age appropriate immunizations.

(b) A licensee meets the requirement of subsection (a) if:

- (1) a child's parent:
 - (A) objects to immunizations for religious reasons; and
 - (B) provides documentation of the parent's objection; or
- (2) the child's physician provides documentation of a medical reason the child should not be immunized;

and the licensee maintains and annually updates the documentation provided by the parent or physician under this subsection.

As added by P.L.121-2002, SEC.3.

IC 12-17.2-5-18.6

Duties of child care home regarding missing child reports

Sec. 18.6. (a) Upon receiving a report under IC 31-36-1-4, a child care home shall thoroughly inspect the report. If the child care home finds that a child on the report required under IC 31-36-1-4 is enrolled at the child care home, the child care home shall immediately notify the Indiana clearinghouse for information on missing children.

(b) Upon receiving a report under IC 31-36-1-4, a child care home shall attach a notice to the child's enrollment records stating that the child has been reported missing. The child care home shall remove the notice when the center is notified under IC 31-36-2-6 that the child has been found.

(c) If a request for the enrollment records of a missing child is received, the child care home shall:

- (1) obtain:
 - (A) the name, address, and telephone number of the person making the request; and
 - (B) the reason that the person is requesting the school records;

and

(2) immediately notify the Indiana clearinghouse for information on missing children.

(d) The child care home may not issue a copy of the enrollment records of a child reported missing without authorization from the Indiana clearinghouse for information on missing children and may not inform the person making the request that a notice that the child has been reported missing has been attached to the child's records.

As added by P.L.12-1994, SEC.9. Amended by P.L.1-1997, SEC.70.

IC 12-17.2-5-19

Notice of enforcement actions; informal meetings

Sec. 19. Except as provided in section 29 of this chapter, the division shall give a licensee thirty (30) calendar days written notice by certified mail of an enforcement action. The licensee shall also be provided with the opportunity for an informal meeting with the division. The licensee must request the meeting within ten (10) working days after receipt of the certified notice.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-5-20

Administrative hearings

Sec. 20. (a) An administrative hearing concerning the decision of the division to impose a sanction under this chapter shall be provided upon a written request by the child care home. The request must be made within thirty (30) calendar days after receiving notice under section 19 of this chapter. The written request must be made separately from an informal meeting request made under section 19 of this chapter.

(b) The administrative hearing shall be held within sixty (60) calendar days after receiving the written request.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-5-21

Procedure for administrative hearings

Sec. 21. A hearing requested under section 20 of this chapter shall be held in accordance with IC 4-21.5-3.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-5-22

Issuance of decisions

Sec. 22. The division shall issue a decision within sixty (60) calendar days after the conclusion of the hearing.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-5-23

Cessation of operations upon suspension of license

Sec. 23. If a license is suspended, a licensed child care home shall cease operation and may not display the license.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-5-24

Reinstatement of suspended licenses

Sec. 24. To reinstate a suspended license, the following must occur:

- (1) The licensee must, within thirty (30) days of the notice of the suspension, submit a plan of corrective action to the division for approval.
- (2) The plan must outline the steps and timetable for immediate correction of the violations that caused the division to suspend the license.
- (3) The division must approve the plan.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-5-25

Actions of division following suspensions of licenses

Sec. 25. Following the suspension, the division shall do one (1) of the following:

- (1) Reinstate the license for the term of the original license.
- (2) Revoke the license.
- (3) Issue a new license.
- (4) Deny a reapplication.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-5-26

Cessation of operations upon revocation of license

Sec. 26. A child care home shall cease operation when the license of the child care home is revoked.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-5-27

Notice of license revocation or suspension

Sec. 27. (a) After a license is revoked or suspended, the division shall notify in writing each person responsible for the children in care to ensure that those children are removed.

(b) The written notice shall be sent to the last known address of the person responsible for the child in care and shall state that the license of the child care home has been revoked or suspended.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-5-28

Judicial review

Sec. 28. A final decision of the division made after a hearing is subject to judicial review under IC 4-21.5-5.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-5-29

Investigation of unlicensed facilities; injunctions; civil penalties; removal of children

Sec. 29. (a) The division shall investigate a report of an unlicensed child care home and report the division's findings to the attorney general and to the county department of public welfare attorney and the

prosecuting attorney in the county where the child care home is located.

(b) The attorney general or the county department of public welfare attorney may do the following:

(1) Seek the issuance of a search warrant to assist in the investigation.

(2) File an action for injunctive relief to stop the operation of a child care home if there is reasonable cause to believe that:

(A) the child care home is operating without a license required under this article; or

(B) a licensee's noncompliance with this article and the rules adopted under this article creates an imminent danger of serious bodily injury to a child or an imminent danger to the health of a child.

(3) Seek in a civil action a civil penalty not to exceed one hundred dollars (\$100) a day for each day a child care home is operating without a license required under this article.

(c) The division may provide for the removal of children from child care homes described in subsection (b).

(d) An opportunity for an informal meeting with the division shall be available after the injunctive relief is ordered.

(e) The civil penalties collected under this section shall be deposited in the child care fund.

(f) Section 34 of this chapter does not apply to the civil penalties imposed under this section.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-5-30

Expiration of injunctions for operation without a license

Sec. 30. A court order granted under section 29(b)(2)(A) of this chapter expires when the child care home is issued a license.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-5-31

Expiration of injunctions for creation of imminent danger

Sec. 31. A court order granted under section 29(b)(2)(B) of this chapter expires upon the later of the following:

(1) Sixty (60) calendar days after the order is issued.

(2) When a final division decision is issued under sections 20 through 22 of this chapter if notice of an enforcement action is issued under section 19 of this chapter.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-5-32

Grounds for revocation of licenses

Sec. 32. (a) The following constitute sufficient grounds for revocation of a license:

(1) A determination by the division of child abuse or neglect (as defined in IC 31-9-2-14) by the licensee.

(2) A criminal conviction of the licensee, of an employee or a volunteer of the licensee, or of a member of the licensee's

household, of any of the following:

- (A) A felony.
 - (B) A misdemeanor related to the health or safety of a child.
 - (C) A misdemeanor for operating a child care center without a license under IC 12-17.2-4-35.
 - (D) A misdemeanor for operating a child care home without a license under section 35 of this chapter.
- (3) A determination by the division that the licensee made false statements in the licensee's application for licensure.
- (4) A determination by the division that the licensee made false statements in the records required by the division.
- (5) A determination by the division that the licensee previously operated a:
- (A) child care center without a license under IC 12-17.2-4; or
 - (B) child care home without a license under this chapter.
- (b) Notwithstanding subsection (a)(2), if:
- (1) a license is revoked due to a criminal conviction of:
 - (A) an employee or a volunteer of the licensee's; or
 - (B) a resident of the licensee's household; and
 - (2) the division determines that the:
 - (A) employee or volunteer has been dismissed by the licensee; or
 - (B) member of the licensee's household is no longer a member of the licensee's household;

the criminal conviction of the former employee, former volunteer, or former member does not require revocation of a license.

As added by P.L.1-1993, SEC.141. Amended by P.L.136-1993, SEC.20; P.L.1-1997, SEC.71; P.L.109-2002, SEC.12.

IC 12-17.2-5-33

Disciplinary sanctions

Sec. 33. (a) A licensee shall operate a child care home in compliance with the rules established under this article and is subject to the disciplinary sanctions under subsection (b) if the division finds that the licensee has violated this article.

(b) The division may impose any of the following sanctions when the division finds that a licensee has committed a violation under subsection (a):

- (1) After complying with the procedural provisions in sections 19 through 22 of this chapter:
 - (A) suspend the license for not more than six (6) months; or
 - (B) revoke the license.

(2) Seek civil remedies under section 29 of this chapter.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-5-34

Civil penalty for violation of article

Sec. 34. (a) In addition to the other penalties imposed under this chapter, the division may impose a civil penalty of not more than one thousand dollars (\$1,000) for the violation of this article.

(b) The division shall deposit the civil penalties collected under this

section in the child care fund.
As added by P.L.1-1993, SEC.141.

IC 12-17.2-5-35

Violations of chapter

Sec. 35. A person who knowingly or intentionally violates this chapter commits a Class B misdemeanor.
As added by P.L.1-1993, SEC.141.

IC 12-17.2-5-36

Prohibition of care home classification for E building occupancy

Sec. 36. The fire prevention and building safety commission may not adopt rules that classify a child care home as an E building occupancy classification.
As added by P.L.136-1993, SEC.21.